

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KEITH L CLOSSON,

Plaintiff,

V.

DAN PACHOLKE,

Defendant.

CASE NO. 3:16-CV-05062-RBL-JRC  
ORDER GRANTING MOTIONS TO  
AMEND

Plaintiff Keith L Closson, proceeding *pro se* and *in forma pauperis*, filed this civil rights complaint pursuant to 42 U.S.C. § 1983. Before the Court are Plaintiff's Motion to Amend Complaint (Dkt. 13) and Plaintiff's Second Motion to Amend Complaint (Dkt. 14).

Pursuant to Rule 15(a)(1) of the Federal Rules of Civil Procedure,

A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

1 Plaintiff filed his Motions to Amend (Dkts. 13, 14) prior to service and prior to the filing of a  
2 responsive pleading. *See* Docket. Therefore, Plaintiff has the right to file an amended complaint  
3 as a matter of course. “When the plaintiff has the right to file an amended complaint as a matter  
4 of course, [ ] the plain language of Rule 15(a) shows that the court lacks the discretion to reject  
5 the amended complaint based on its alleged futility.” *Thomas v. Home Depot U.S.A., Inc.*, 2007  
6 WL 2140917, \* 2 (N.D. Cal. July 25, 2007) (*quoting Williams v. Board of Regents of University*  
7 *System of Georgia*, 477 F.3d 1282, 1292 n. 6 (11th Cir. 2007)). Accordingly, plaintiff’s motions  
8 to amend (Dkts. 13, 14) are granted.

9       However, an amended pleading operates as a complete substitute for the original  
10 complaint. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992) (*citing Hal Roach*  
11 *Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990)). “All causes of action  
12 alleged in an original complaint which are not alleged in an amended complaint are waived.”  
13 *Marx v. Loral Corp.*, 87 F.3d 1049, 1055-56 (9th Cir. 1996) (*quoting King v. Atiyeh*, 814 F.2d  
14 565 (9th Cir. 1987)). Here, the proposed amended complaints attached to plaintiff’s motions  
15 attempt to supplement pages of his original complaint. *See* Dkts. 13, 14. Therefore, the Court  
16 declines to serve the proposed amended complaint.

17       Accordingly, the Court orders Plaintiff to file a complete amended complaint, and not a  
18 supplement, on or before April 15, 2016. Plaintiff shall present the amended complaint on the  
19 form provided by the Court. The amended complaint must be legibly rewritten or retyped in its  
20 entirety, it should be an original and not a copy, it should contain the same case number, and it  
21 may not incorporate any part of the original complaint by reference. The amended complaint will  
22 act as a complete substitute for the original complaint and not as a supplement.

1 The Clerk is directed to send plaintiff this Order along with the appropriate forms for  
2 filing a 42 U.S.C. § 1983 civil rights complaint.

3 Dated this 16<sup>th</sup> day of March, 2016.

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6 J. Richard Creatura  
7 United States Magistrate Judge  
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